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In Pro se

**FILED**

AUG 15 2019

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SHIKEB SADDOZAI

Case No.C-18-05558 BLF (PR)

Plaintiff,

MEMORANDUM OF LAW IN SUPPORT

v.

OF PLAINTIFF'S MOTION

CLAWSON

FOR THE APPOINTMENT

Defendants.

OF COUNSEL

Statement of the Case

This is a civil rights case filed under 42 U.S.C. § 1983 by a state prisoner and asserting claims for the unconstitutional denial of medical care out of deliberate indifference, denial of due process and for injuries inflicted resulting from the use of excessive force and denial of medical care. The plaintiff seeks damages as to all claims.

### Statement of Facts

The complaint in this case alleges the plaintiff was subjected to deliberate indifference to serious medical needs by multiple correctional officers. Medical conditions disabled the plaintiff and interfered with plaintiff's daily activities, and in the existence of chronic, and substantial pain. Each defendant unknown to plaintiff at this time, at all times acted "under color of state law" some of whom in related case matters liable acted with deliberate indifference, failed to protect plaintiff's life, from being beaten and battered by four other inmates, and other officers of whom watched and failed to intervene, when officer discharged and fired his weapon shooting plaintiff in the back inflicting serious bodily injury incapacitating plaintiff while attempting to cover and protect himself in a crouching position, as the victim of an assault from his attackers, rather than officer shooting, and or dispersing chemical agents in his possession on the four intended targets to gain compliance, and as a result of officers failure, and negligence, plaintiff continued to be beaten and battered by assailants.

Plaintiff alleges that supervisory officials were aware of the violent propensities of some of the officers and liable for failing to take action to control them, who were incharge of running facilities and provide medical services to prisoners, carrying out the policy and practice that led to the violations of the plaintiff's rights secured by the constitution or laws of the United States. Plaintiffs verified complaints filed, were ignored, and alternate requests for complaint and medical forms upon plaintiff's request were repeatedly denied to interfer, impede, or frustrate plaintiff's first amendment rights to initaite a civil cause of action. Supervisory officials out of deliberate indifference to plaintiff's needs failed to react while being aware of ongoing abuse and mistreatment by their subordinate officers, nor attempts were made to remedy the problem.

1 ARGUMENT  
2

## 3 THE COURT SHOULD APPOINT COUNSEL FOR THE PLAINTIFF

4 In deciding whether to appoint counsel for an indigent  
 5 litigant, the court should consider "the factual complexity of the  
 6 case, the ability of the indigent to investigate the facts,  
 7 the existence of conflicting testimony, the ability of the  
 8 indigent to present his claim and the complexity of the legal  
 9 issues." *Abdullah v. Gunter*, 949 F.2d 1032, 1035 (8th Cir. 1991)  
 (citation omitted). In addition, courts have suggested that  
 the most important factor is whether the case has merit.  
*Carmona v. U.S. Bureau of Prisons*, 243 F.3d 629, 632 (2d Cir. 2001).  
 Each of these factors weighs in favor of appointment of  
 counsel in this case.

10  
 11 1. Factual Complexity. The plaintiff alleges that multiple  
 12 correctional officers acted with deliberate indifference  
 13 to serious medical needs, when officers and medical per-  
 14 sonnel disregarded requests for medical attention based on  
 15 plaintiff's complaints of pain, suffering, cuts, bruising, skin  
 16 rashes, infections, while other officers stood by and  
 17 watched. Plaintiff also asserts that prison supervisory  
 18 officials were on notice of the violent propensities of  
 19 some of those officers and did nothing about them.  
 20 Plaintiff challenges the denial of medical care after the  
 21 incident by multiple defendants, the use of excessive  
 22 force and deprivations of daily living requirements to  
 23 maintain daily personal hygiene. Finally when plaintiff  
 24 engaged in filing a complaint officers threatened plaintiff  
 25 with physical violence, filed false disciplinary actions,  
 and repeatedly canceled/rejected plaintiffs complaints, out  
 of retaliation and to prevent a civil rights suit, thereby  
 violating plaintiff's 1st, 4th, 5th, 6th, 8th, and 14th  
 Amendment to due process. The sheer number of claims and  
 defendants make this a factually complex case.

26  
 27 In addition, one of the plaintiff's claims involves the  
 28 denial of medical care; it will probably be necessary to  
 29 present a medical expert witness or to cross examine  
 30 medical witnesses called by defendants, or both. The pres-  
 31 ence of medical or other issues, requiring expert testimony  
 32 supports the appointment of counsel. *Montgomery v. Pinchak*,  
 294 F.3d 492, 503-04 (3d Cir. 2002); *Moore v. Mabus*, 976 F.2d  
 268, 272 (5th Cir. 1992); *Jackson v. County of McLean*, 953  
 F.2d 1070, 1073 (7th Cir. 1992).

1       2. The plaintiff's ability to investigate. The plaintiff is  
 2       locked up and has no ability to investigate the facts. For  
 3       example, plaintiff is unable to identify, locate, and  
 4       interview the inmates who were housed in nearby cells and  
 5       who saw some or all of the events that took place. Plain-  
 6       tiff is in the same situation with regard to developing  
 7       the facts as an inmate who has been transferred to a diff-  
 8       erent institution, a factor that several courts have cited  
 9       in appointing counsel. *Tucker v. Randall*, 948 F.2d 288, 391-  
 10      92 (7th Cir. 1991); *Gatson v. Coughlin*, 679 F.Supp. 270, 273  
 11      (W.D.N.Y. 1988).

12      In addition, this case will require considerable  
 13      discovery concerning the identities of witnesses, the  
 14      officer's reports and statements about the incident, any  
 15      prior history of denial of medical care, retaliation,  
 16      misuse of force by officers, and the plaintiff's medical  
 17      history. see *Parham v. Johnson*, 126 F.3d 454, 459 (3.d Cir.  
 18      1997) (holding counsel should have been appointed because  
 19      " prisoners lack of legal experience and the complex  
 20      discovery rules clearly put plaintiff at disadvantage in  
 21      countering the defendants discovery tactics...these  
 22      [discovery] rules prevented [the plaintiff] from present-  
 23      ing an effective case below.").

24      3. Conflicting testimony. The plaintiff's accounts of the  
 25      denial of medical care by officers who acted with deli-  
 26      berate indifference, while other officers watched and  
 27      failed to intervene. Supervisory officials who were in-  
 28      charge of running facility and provide medical services  
 29      to prisoners, while being aware of the violent propensit-  
 30      ies of some of the officers, falls squarely in conflict  
 31      within the aspect of this case and will be a credibility  
 32      contest between the defendants and the plaintiff (and such  
 33      inmate witnesses as can be located). The existence of  
 34      these credibility issues supports the appointment of  
 35      counsel. *Steele v. Shah*, 87 F.3d 1266, 1271 (11 Cir. 1996);  
 36      *Gatson v. Coughlin*, 679 F.Supp. at 273.

37      4. The ability of the indigent to present his claim. The  
 38      plaintiff is an idigent prisoner with no legal training,  
 39      a factor that supports the appointment of counsel.  
 40      *Forbes v. Edgar*, 112 F.3d 262, 264 (7th Cir. 1997).

1 In addition plaintiff is confined and has no access to  
2 recieve legal materials and or has been obstructed by  
3 correctional officers from access to legal materials.  
4 Rayes v. Johnson,969 F.2d 700,703-04 (8th Cir.1992)  
5 (Citing lack for ready access to a law library as a factor  
6 supporting appointment of counsel).

7  
8 5. Legal complexity. The large number of defendants, some of  
9 whom are supervisory officials, presents complex legal  
10 issues of detirmining which defendants were sufficiently  
11 personally involved in the constitutional violations to be  
12 held liable. Hendricks v. Coughlin,114 F.3d 390,394  
13 (2d Cir.1997) (holding complexity of supervisory liability  
14 supported appointment of counsel).

15 In addition, the plaintiff has asked for a jury trial,  
16 which requires much greater legal skill than the plaintiff  
17 has or can develop. Solis v. County of Los Angeles,514 F.3d  
18 946,958 (9th Cir.2008) (prisoner with eighth grade education  
19 and no legal training is " ill-suited " to conduct  
20 a jury trial).

21 6. Merit of the case. The plaintiff's allegations, if proved,  
22 clearly would establish a constitutional violation. The  
23 injurious use of chemical agents and deprivations in  
24 maintaining daily hygiene, fresh air, and exercise,  
25 alleged in complaint, clearly states an Eighth Amendment  
26 violation. see Hudson v. McMillian,503 U.S.1,112 S.Ct.995  
27 (1992). The allegations of denial of medical care amount  
then, this is a meritorious case.

1 CONCLUSION  
2

3 For the foregoing reasons, the court should grant the plaintiff's  
4 motion and appoint counsel in this case.

5 Date: August , 8th 2019  
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